

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SKY MILLER,

Plaintiff,

v.

RON VAN BOENING et al.,

Defendants.

CASE NO. C10-5712RBL/JRC

ORDER

This 42 U.S.C. §1983 civil rights matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rule MJR 1, MJR 3, and MJR 4. Before the court is plaintiff's motion asking that service of process be served on defendant Perry Bartram (ECF No. 16).

The court has reviewed the file and finds the case has become procedurally complex. Court intervention is appropriate. A brief history of the action may shed light on the problems.

Defendants moved to dismiss the original complaint (ECF No. 14). All defendants, except defendant Perry Bartram, had accepted service by mail. There is nothing in the file to show defendant Bartram received the attempt to serve him by mail.

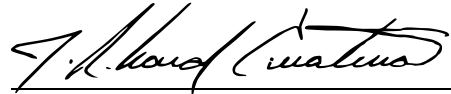
1 The court issued a Report and Recommendation which, if adopted, would have allowed  
2 plaintiff to file an amended complaint if he had facts showing how each defendant acted. (ECF  
3 No. 15). The Report and Recommendation noted that defendant Bartram had not accepted  
4 service by mail and this court recommended that the plaintiff be ordered to show cause why he  
5 had not taken any steps to perfect service.  
6

7 Without waiting for the Report and Recommendation to be accepted by the district court,  
8 on February 28, 2011, plaintiff filed a proposed amended complaint and a motion asking that  
9 defendant Bartram be served (ECF No. 16). Nine days later, on March 9, 2011, again before the  
10 district court had authorized the filing of the first amended complaint, all the defendants (except  
11 for Bartram) filed an answer to the first amended complaint (ECF No. 17). On March 14, 2011,  
12 the district court filed an order adopting the report and recommendation and ordering that  
13 plaintiff file an amended complaint, which, of course, had already been filed. The court also  
14 stated that "Plaintiff also has thirty days to either perfect service on defendant Bertram or show  
15 cause why he has not perfected service on this defendant." (ECF No. 19). Plaintiff has done  
16 neither.  
17

18 The court understands that the McNeil Island Corrections Center is now closed. The  
19 court does not have a current address for defendant Bartram. The motion asking for the Marshals  
20 to serve this defendant is premature. Plaintiff needs to provide the court with a service packet  
21 that includes a copy of the amended complaint, and a waiver of service form. The court will  
22 again attempt service by mail. Plaintiff may be able to obtain a current working address  
23 through discovery or by simply asking the Department of Corrections for that information. If he  
24 is not able to obtain a current work address, he may bring a motion as allowed by the Federal  
25  
26

1 Rules of Civil Procedure. The motion to serve (ECF No. 16) is DENIED WITHOUT  
2 PREJUDICE at this time.

3 DATED this 30<sup>th</sup> day of March 2011.  
4

5  
6 

7 J. Richard Creatura  
8 United States Magistrate Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26